IN THE HIGH COURT OF JUDICATURE AT PATNA

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Civil Writ Jurisdiction Case No.5662 of 2002

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Sridhar Sinha, son of late Netram Singh, resident of Village Ramdeo Chak, P.S. and District Jehanabad.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Commissioner cum Secretary, Cabinet Secretariat and Co-ordination Department, Government of Bihar, Patna.
3. Commissioner cum Secretary, Department of Health, Government of Bihar, Patna.
4. Director in Chief, Health Services, Department of Health, Government of Bihar, Patna.

.... Respondents

with

Civil Writ Jurisdiction Case No. 13292 of 2002

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Sridhar Sinha, son of late Netram Singh, resident of Village Ramdeo Chak, P.S. and District Jehanabad.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner cum Secretary, Department of Health, Government of Bihar, Patna.
2. Director in chief, Health Services, Government of Bihar, Patna.
3. Accountant General, Bihar, Patna.
4. District Provident Fund Officer, Patna.
5. Civil Surgeon cum Chief Medical Officer, Patna.
6. Chief Malaria Officer, Bihar, Patna.
7. Medical Officer, Incharge, Sadar Block, Patna.

.... Respondents

with

Miscellaneous Jurisdiction Case No. 534 of 2003

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Sridhar Sinha, son of late Netram Singh, resident of Village Ramdeo Chak, P.S. and District Jehanabad.

.... Petitioner

Versus

1. State of Bihar.
2. Mr. Ashok Choudhary, Commissioner cum Secretary, Department of Health, Government of Bihar, Patna.
3. Dr. (Capt) Anil Kumar, Director-in-Chief, Health Services, Government of Bihar, Patna.
4. Dr. Sudhir Kumar Aman, Civil Surgeon cum Chief Medical Officer, Patna.
5. Dr. Om Prakash Khetan, Incharge Medical Officer, Sadar Block, Patna.

.... Opp. Parties

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For the Petitioners: Mr. Banwari Sharma, Adv.
Mr. Shiv Kumar, Adv.
For the State: Mr. Prabhakar Tekriwal, G.P-1.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
CAV JUDGMENT
Date: 25-06-2012

Heard learned counsel for the parties.

In this writ application, the petitioner has prayed for quashing of the order dated 9.3.2002 passed by the Commissioner and the Secretary to the Health Department of the Government of Bihar rejecting the prayer of the petitioner for payment of salary for the period May, 1992 to December, 2000 as also for a consequential relief by way of a direction to the respondents to make payment of salary of the petitioner for the aforementioned period.

The facts giving rise to this writ application lie in a very narrow compass. The petitioner, holding the post of Basic Health Inspector while working at Patna, was transferred by the Civil Surgeon of Patna to Bikram by an order dated 19.12.1989. The said order of transfer was initially stayed on 23.1.1990 but ultimately the petitioner was directed to join at Bikram and was relieved on 20.8.1991 under the order of the Director-in-Chief of the Health Services. Though the petitioner claimed that on 4.11.1991, the Civil Surgeon, Patna on being orally directed by the Director-in-Chief had allowed the petitioner to continue at Patna but as such continuation of

the petitioner at Patna had affected adversely one Chitranjan Kumar Singh also posted at Patna on the same post, the petitioner's posting and continuation at Patna was no longer allowed by the Civil Surgeon in view of an order passed by this Court on 1.5.1992 in CWJC No. 6224 of 1991 filed by aforesaid Chitranjan Kumar Singh claiming payment of salary against the solitary post of Basic Health Inspector against which both the petitioner and Chitranjan Kumar Singh were claiming their continuation at Patna.

It was in this backdrop that the petitioner himself had filed writ application, CWJC No. 4901 of 1992 for seeking a direction for payment of his salary with effect from 2.5.1992 but the aforementioned writ application CWJC No. 4901 of 1992 was dismissed as withdrawn by this Court on 9.7.1992. In view of the aforesaid order of this Court, the petitioner was again directed to join at Bikram but he did not do so and ultimately on 4.11.1992, the Civil Surgeon, Patna had passed a firm order directing the petitioner to report immediately for duty at Bikram failing which he could be subjected to a departmental proceeding for disobedience of his transfer order. The petitioner, however, kept on defying the transfer order on a plea that he was an office bearer of the Employees Union and as such he could not have been transferred out of Patna. He had thereafter filed another writ application, CWJC No. 2656 of 1995

claiming payment of his salary. This Court by an order dated 7.8.1995 had disposed of the aforesaid writ application by issuing a direction to the Director-in-Chief to look into the grievance of the petitioner both with regard to his posting at Patna in capacity of office bearer of Employees Association as also for payment of his salary. The petitioner is said to have filed his representation on 17.8.1995 to the Director-in-Chief of the Health Services on which an order was passed in his favour on 20.12.1995 directing the continuation of the petitioner at Patna as also for payment of his salary. The petitioner has also claimed that the consequential order dated 26.12.1995 was issued by the Civil Surgeon, Patna in compliance of the order of the Director-in-Chief dated 20.12.1995 but as two persons were claiming continuation on the same post, namely, the petitioner and Chitranjan Kumar Singh, the Civil Surgeon, Patna on 20.1.1996 had passed an order transferring the petitioner to Hiranand Pur but the petitioner instead of reporting for duty at Hiranand Pur had filed yet another writ application, CWJC No. 1804 of 1996 claming and insisting that he should not have been disturbed from Patna in view of the order of the Director-in-Chief dated 20.12.1995. It was in such circumstances that the Director-in-Chief by an order dated 2.3.1996 had himself cancelled his earlier order dated 20.12.1995 and had directed the petitioner to join at Bikram, his earlier place of his posting. The

petitioner, however, despite being aware of this fact that his order of transfer of the Director-in-Chief dated 20.12.1995 has been canceled, had obtained a direction in his pending writ application CWJC No. 1804 of 1996 in which on 25.3.1996 an order was passed by this Court for not only restoring the place of posting of the petitioner at Patna but also making payment of his arrears of salary.

As noted above, since the order of the Director-in-Chief of the Health Department dated 20.12.1995 had already been cancelled by him on 23.1.1996, the Civil Surgeon, Patna did not allow the petitioner to continue at Patna and when the petitioner wanted to enforce the order of this Court dated 25.3.1996 by filing a contempt application, a review application was filed by the respondents for recall of the order dated 25.3.1996 passed in CWJC No. 1804 of 1996. This Court ultimately after hearing the review application of the State of Bihar had found that the petitioner had obtained the order dated 25.3.1996 by making suppression of fact and as such, by an order dated 20.9.1997, the review application of the State was allowed by this Court and the order dated 25.3.1996 in CWJC No. 1804 of 1996 was recalled and the writ application of the petitioner was also dismissed.

The petitioner, who had himself remained defiant and had not joined at his transferred place of posting at Bikram, had again

filed a fresh writ application, CWJC No. 9909 of 1997 assailing the order of the Director-in-Chief of the Health Services dated 2.3.1996. In the said writ application, after the prayer of the petitioner for staying the operation of the order dated 2.3.1996 was rejected on two occasions, the same was heard on merit by a Division Bench which in its final order dated 3.11.1998 had found no substance in the writ application and had accordingly dismissed the same whereafter the petitioner had moved the Apex Court and during pendency of the Civil Appeal no. 4676 of 1999 before the Apex Court, the petitioner had retired from service on 31.12.2000. The Apex Court while disposing of the Civil Appeal No. 4676 of 1999 by an order dated 27.11.2001 had given liberty to the petitioner to file a representation before the State Government for claiming arrears of salary or other emoluments and in pursuance of the aforementioned observations and liberty given by the Apex Court in the order dated 27.11.2001, the petitioner had filed a representation on 4.12.2001 on which the impugned order dated 9.3.2002 had been passed holding that since the petitioner did not comply the order of transfer and had never joined and worked at the transferred place of his posting at Bikram, he would not be entitled for payment of salary and emoluments for the period May, 1992 to December, 2000 but, would be entitled to leave without pay and/or payment of salary and emoluments as against accumulated

leave, if any, admissible to him.

Mr. Banwari Sharma, learned counsel for the petitioner, has submitted that the Commissioner and the Secretary to the Health Department, while passing the impugned order, had failed to take into consideration that the transfer order of the petitioner dated 19.12.1989 had already been cancelled by the Civil Surgeon on 23.1.1990 and as such, its non-compliance could not have been made the issue for disobedience of transfer order of the petitioner. In this regard, he has also submitted that the petitioner was an office bearer of the Employees Association and hence, his transfer outside Patna was not permissible and, therefore, non-compliance of an illegal order of transfer could not have been made the issue for denying the payment of salary to the petitioner. He has further submitted that the Director-in-Chief having allowed the petitioner to revert back to Patna from Bikram by his order dated 20.12.1995 was not justified in recalling his order dated 2.3.1996 and, therefore, the petitioner cannot be said to have disobeyed the order of transfer.

Learned counsel for the State, on the other hand, has submitted that the petitioner has always made an attempt to remain posted at Patna and his disobedience of the order of transfer is writ large on the face of record. He has further submitted that after the dismissal of the writ application of the petitioner by an order of this

Court dated 3.11.1998 in CWJC No. 9909 of 1997, he cannot be heard to say that the order of the Director-in-Chief of the Health Services dated 2.3.1996 as with regard to the posting of the petitioner at Bikram was bad or illegal. He has in this regard also submitted that continued disobedience of his transfer order by the petitioner could not have been accepted by the State Government nor could he be rewarded by also allowing payment of salary to the petitioner for the period he had never worked at any place.

In the considered opinion of this Court, a government servant working on a transferable post is under obligation to comply the transfer order. Admittedly, the petitioner's transfer from Patna to Bikram was not interfered by this Court at any point of time though as noted above, he had filed as many as four writ applications sometime assailing the order of transfer and sometime claiming payment of salary while still disobeying the order of transfer. As a matter of fact, when the petitioner's first writ application, CWJC No. 4901 of 1992 did not yield the desired result and the same was dismissed as withdrawn on 9.7.1992, the petitioner ought to have joined his transferred post at Bikram after the dismissal of the writ application but, he did not do so. In fact, a strict warning issued to the petitioner by the Civil Surgeon on 4.11.1992 in the following terms:-

''प्रेषक

डा0 अरूण कुमार सिन्हा,
असैनिक शाल्य चिकित्सक सह मुख्य

चिकित्सा पदाधिकारी, पटना।

सेवा में,

प्रभारी चिकित्सा पदाधिकारी,
सदर प्रखण्ड, पटना।

पटना, दिनांक ——————————

विषय– श्री श्रीधर सिंह, बुनियादी स्वास्थ्य निरीक्षक के संबंध में।

महाशय,

उपर्युक्त विशयक, आपके पत्र संख्या 535 दिनांक 26.9.92 के प्रसंग में सूचित करना है कि सरकारी वकील न0–1, उच्च न्यायालय पटना ने अपने पत्र संख्या 11030 दिनांक 14–7–92 द्वारा सूचित किया है कि श्री श्रीधर सिंह, बुनियादी स्वास्थ्य निरीक्षक, पटना सदर प्रखंड द्वारा दायर किये गये को, माननीय उच्च न्यायालय द्वारा डिसमिस कर दिया गया है (प्रतिलिपि संलग्न)

अतः माननीय उच्च न्यायालय के फैसले के आलोक में, श्री श्रीधर सिंह, बुनियादी स्वास्थ्य निरीक्षक (मलेरिया) को उनके स्थानान्तरित स्थान विक्रम प्रखंड में योगदान करने का तुरन्त आदेष निर्गत करें। आपके आदेश के बावजूद भी वे विक्रम प्रखंड में योगदान के लिए नहीं जाते हैं और अनाधिकृत रूप से अपना उपस्थिति, उपस्थिति पंजी में बनाते हैं तो इसकी सूचना अधोहस्ताक्षरी को दी जाये ताकि उनके विरूद्ध अनुशासनिक कार्रवाई की जा सके। फिलहाल किसी प्रकार का भुगतान उन्हें नहीं किया जाये। इस पत्र की प्रतिलिपि श्री श्रीधर सिंह को भी दी जा रही है।

विश्वासभाजन
ह0/–
असैनिक षल्य चिकित्सक सह मुख्य चिकित्सा पदाधिकारी, पटना।

ज्ञाप संख्या 8960 पटना, दिनांक 4.11.92

प्रतिलिपि श्रीधर सिंह, बुनियादी स्वास्थ्य निरीक्षक (मलेरिया) सदर प्रखंड पटना को सूचनार्थ एवं आवष्यक कार्रवाई हेतु प्रेशित। आपको आदेश दिया जाता है कि आप अपना योगदान अपने नव पदस्थापित स्थान बिक्रम प्रखड में दें अन्यथा आपके विरूद्ध अनुशासनिक कार्रवाई की जायेगी। साथ ही स्पष्टीकरण प्रस्तुत करें कि किस परिस्थिति में अपना उपस्थिति, पटना सदर प्रखड के उपस्थिति पंजी अनाधीकृत रूप से बनाया है जबकि प्रभारी चिकित्सा पदाधिकारी, पटना सदर प्रखड के द्वारा, उनके पत्रांक 311 दि0 27–5–92 द्वारा आप कार्य विरमित किये जा चुके है।

प्रतिलिपि प्रभारी चिकित्सा पदाधिकारी, विक्रम प्रखंड को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित। श्री श्रीधर सिंह, बुनियादी स्वास्थ्य निरीक्षक के योगदान करने या न करने की सूचना 40 दिनों के अन्दर अधोहस्ताक्षरी को दी

जाये।

असैनिक शल्यचिकित्सक सह मुख्य
चिकित्सा पदाधिकारी, पटना।''

by itself would go to show that even after the petitioner was relieved for joining at Bikram on 27.5.1992, he had still not complied the transfer order. As a matter of fact, from 27.5.1992, the petitioner upon being relieved from Patna did not discharge duty of the post on which he was transferred at Bikram and, therefore, his filing of writ application in the year 1995 for claiming payment of salary was itself wholly misconceived. In any event, the order passed by the Director-in-Chief dated 20.12.1995 while complying the order of this Court dated 7.8.1995 as with regard to payment of salary of the petitioner and his being reverted back to his post at Patna was also recalled and cancelled by the Director-in-Chief himself by an order dated 2.3.1996. The petitioner's writ application as against the said order dated 2.3.1996 was dismissed by this Court by a reasoned order dated 3.11.1998 and, therefore, the petitioner cannot be heard to say that his unilateral act of continued defiance of the order of transfer could have been rewarded by the Commissioner and the Secretary of the Health Department by allowing payment of his salary. It has to be kept in mind that if the petitioner had complied the order of his transfer dated 20.1.1996, which was passed by the Civil Surgeon, Patna in order to comply the earlier order of the Director-in-Chief dated 20.12.1995,

the position could not have been as pathetic as it has now become. The petitioner in fact did not comply even that order of transfer and his writ application CWJC No. 1804 of 1996 was also ultimately dismissed by an order dated 20.9.1997.

The overall picture which therefore would emerge much in the case of the petitioner is that he had kept on defying the transfer order and had made himself liable for being subjected to major punishment including dismissal from service. If the respondents, therefore, had not taken any action against the petitioner on account of his repeated filing of the writ application and taking the matter to the Supreme Court, the petitioner cannot at least get the benefit of his payment of salary for the period in which he had admittedly not worked.

As with regard to the claim of the petitioner of being an office bearer of the employees association and thus immune from order of transfer, this Court can do no better but extract the earlier findings recorded by the Division Bench of this Court in the order dated 3.11.1998 while dismissing the writ application of the petitioner CWJC No. 9909 of 1997 assailing the order of the Director-in-chief dated 2.3.1996. The Division Bench in this regard had held as follows:-

> *"---- From the aforesaid order it clearly transpires that the petitioner was earlier also transferred by the Civil Surgeon, Patna*

vide order dated 18.12.89 and still he did not comply with the same, the present transfer order as contained in Anenxure-9 has also been passed on 2.3.96. Though no interim order has been passed by this court rather the same has already been rejected still the petitioner has not complied with the same. No averment whatsoever has been made that Annexure-9 has not been passed by the competent authority. The transfer being exigency of service cannot be transferred with in a writ jurisdiction. In the present case the transfer order is dated 2.3.96 and the petitioner inspite of dismissal of his interim application for stay, has not joined his place of transfer. The circular regarding posting of the members of association at the Headquarter are also not binding inasmuch as the same cannot be directed to be implemented under Article 226 of the constitution.

As the order of transfer has been passed by the competent authority and no malice could be shown inasmuch as that the petitioner who was earlier transferred on 18.12.1989 had also not complied with the earlier order, to our mind, no relief can be granted to the writ petitioner. The petitioner is directed to join his post of transfer forthwith."

As noted above, the plea of the petitioner being office bearer of the Employees Union and thus immune from the order of transfer in view of the State Government Circular was also not held to be binding much less enforceable under Article 226 of the Constitution of India. It has to be kept in mind that the petitioner despite a direction of the Division Bench of this Court dated 3.11.1998 to join at his transferred place of posting at Bikram forthwith did not comply the said order. His appeal before the Apex Court was also simply disposed of after his retirement by merely giving him a liberty to file his representation for payment of salary. It

thus becomes clear that the petitioner had defied the order of his transfer at his own risk and also did not carry out the direction given by this Court for joining on the transferred post. The petitioner under such circumstances, could not have claimed for payment of salary and the impugned order passed by the Commissioner and the Secretary to the Health Department in compliance of the order of the Apex Court to the same effect also does not suffer from any infirmity, inasmuch as, the Apex Court did not interfere with the order of the Division Bench of this Court as would be apparent from the order dated 27.11.2001 of the Apex Court which reads as follows:-

> *"It is now stated that the appellant has since retired from service, no useful order can be made in regard to question of transfer. His claim is now confined only to claiming arrears of salary or other emoluments, if any.*
>
> *In regard to that aspect of the matter, the appellant has not made any specific claim earlier, therefore, it would not be proper for us to go into that question in these proceedings. It would be proper for the appellant to make due representation to the Government and make a claim before the Government.*
>
> *Mr. B.B. Singh, learned counsel for the respondents brings to our notice that inasmuch as the appellant had not rejoined his duties pursuant to the orders of the High Court or this Court and disciplinary action as initiated against him would have an impact on this course of action to be taken by the Government.*
>
> *It would be appropriate for the appellant to make a representation to the Government within a period of one month from today and Government to dispose of the same within a period of three months from date of receipt of the representation. The Government shall take into consideration whether modification in*

regard to salary and pension should be made or not. The appeal is disposed of accordingly."

From reading of the aforementioned order of the Apex Court, it would be clear that the findings recorded by the Division Bench in the order dated 3.11.1998 in CWJC No. 9909 of 1997 as with regard to the order of transfer being valid and legal and the petitioner being in habit of defying the transfer order was not disturbed and thus approved. In such a situation, the reasons given in the impugned order for denying payment of salary, reading as follows:-

"14. उपर्युक्त तथ्यों से स्पष्ट है कि आवेदक का स्थानान्तरण सक्षम पदाधिकारी द्वारा प्रशासनिक कारणों से किया गया। आवेदक ने आदेश का पालन नहीं किया एवं स्थानान्तरित स्थान पर योगदान नहीं दिया। आवेदक सेवा निवृत्त हो गये है। अतः उनके मामले पर सहानुभूतिपूर्वक विचार करते हुए यह निर्णय लिया जाता है कि पूरे अवधि दिनांक 27.5.92 से 31.12.2000 तक उन्हें वेतनरहित असाधारण अवकाश स्वीकृत किया जाता है। दूसरे शब्दों में आवेदक ने चूँकि स्वेच्छा से स्थानान्तरित स्थान पर योगदान नहीं दिया एवं उक्त अवधि में कोई सरकारी कार्य नहीं किया, अतः उक्त अवधि का वेतन उन्हें देय नहीं होगा। लेकिन अगर आवेदक को कोई छुट्टी देय है उस स्थिति में वे नियमानुसार आवेदन देने के लिए स्वतंत्र है। उनके आवेदन पर नियमानुसार विचार किया जायेगा। आदेश की प्रतिलिपि आवेदक को निबंधित डाक से भेजें।"

does suffer from any error. By now it is well settled that payment of salary has to be made for the discharge of duty by an employee, inasmuch as, the principle of 'no pay for no work' is based upon a fundamental concept that in the law of contract of employment,

normally the wages/salary is paid by the employer in consideration of work/service rendered by the employee. Remuneration by way of payment of salary is the consideration which flows from the employer for the work rendered by an employee under the terms and contract of the employer. Lord Denning M.R. in the case of Secretary of State for employment Vs. Associated Society of Locomotive Engineers and Fireman reported in 1972(2) All ER 949 had laid down law in this regard in the following words:-

> *"I am inclined to think that it is not so much a question of whether the contract is divisible or entire but of reciprocal promises as the consideration, that is to say, the employer provides the employment and pays the remuneration and the employee performs the work during the period he is supposed to do the work. Therefore, the right of the employee to get the remuneration depends upon the performance of his work during the period of employment. If there is any failure of that consideration then taking a strict view of the matter the employer is entitled to refuse and payment at all."*

The aforementioned principle of English Court has also been followed by our Apex Court in the case of Bank of India Vs. T.S. Kelawala reported in 1990(4)SCC 744 wherein it was held that if the workers had not worked in the period of strike, they could not expect to be paid. This aspect of the matter has also been considered by the Apex Court in the case of Sukhdeo Pandey Vs. Union of India & Anr. reported in 2007(7)SCC 455 wherein it has been held as follows:-

> *"17. Before parting with the matter, however, we may make one*

thing clear. From the record, it appears that after the appellant was reverted from the cadre of Postman to his substantive post of EDBPM, he has not joined duty and has not worked. No interim relief was granted by any court including this Court in his favour. In the circumstances, it was obligatory on him to report for duty as EDBPM. He, however, failed to do so. We, therefore, hold that if the appellant has not worked, he will not be paid salary for the period for which he has not worked. It is well-settled principle in service jurisprudence that a person must be paid if he has worked and should not be paid if he has not. In other words, the doctrine of "no work, no pay" is based on justice, equity and good conscience and in absence of valid reasons to the contrary, it should be applied. In the present case, though the appellant ought to have joined as EDBPM, he did not do so. He, therefore, in our considered opinion, cannot claim salary for that period."

Thus in the light of admitted fact that the petitioner did not discharge duty and well settled principle of "no work no pay" is not entitled for payment of his salary as claimed in this writ application. The rejection of such claim of payment of his salary by the impugned order would accordingly require no interference from this Court.

This Court thus for the reasons recorded above does not find any merit in this application and the same is, accordingly, dismissed.

CWJC No. 13292 of 2002

In this writ application, the petitioner has made a prayer

for payment of his pension, gratuity, leave salary, provident fund, group insurance and other dues payable to him along with 18% interest.

This Court by an order dated 10.2.2003 in this case had recorded that the result of this writ application was substantially dependent on the result of CWJC No. 5662 of 2002 and, therefore, it had directed that both the cases should be heard together. This Court as noted above has dismissed CWJC No. 5662 of 2002 holding that the petitioner was not entitled for payment of his salary for the period May, 1992 to December, 2000 and the said period was to be only treated as extra ordinary leave without pay.

The petitioner was admittedly in government service from and thus even if when he has not been found entitled to draw his salary for the period of May, 1992 to December, 2000, he would be eligible to get his post retirement benefit in terms of the provision of Bihar Pension Rules. It has to be kept in mind that this Court in the interim order dated 21.5.2002 in the connected writ application CWJC No. 5662 of 2002 had held as follows:-

> *"It is clarified that the finalization of the pension etc. will not be held up on account of pendency of this case which may be provisionally fixed and also paid to the petitioner without prejudice to the right and contention of the parties, subject to result of this case."*

Pursuant thereto, the respondents have filed a counter

affidavit wherein it has been stated that Provisional Gratuity amounting to Rs. 1,43,243/-, Leave Encashment to the tune of Rs. 43,268/-, Group Insurance amounting to Rs. 13,369/ and Final Withdrawal of G.P.F. amounting to Rs. 1,99,619/- has been paid to the petitioner apart from the fixation of his provisional pension at the rate of Rs. 3988/- per month from the month of January, 2001 and the amount of pension was paid up to the month of October, 2004. It has also been indicated in the counter affidavit that sanction of final pension and gratuity has also been made by the State Government by an order dated 11.1.2005.

Mr. Banwari sharma, learned counsel for the petitioner, however, had submitted that the respondents despite treating the period of absence of the petitioner from May 1999 to December-2000 as extra ordinary leave have not taken the aforementioned period in the total computation of all the retirement benefits and the petitioner in fact has been given such post retirement benefit by taking into account the services rendered by him only for the period from 30.10.1964 to 30.04.1992 i.e. 28 years but as a matter of fact as the petitioner had retired from service on 31.12.2000, he would be entitled to compute his total length of service from 30.12.1964 to 31.12.2000. Mr. Sharma, in fact is of the view that if the length of service of the petitioner gets increased from 28 years to 36 years, it

would make substantial difference in the amount of monthly pension as also other retirement benefits depending on the length of service.

This Court in order to clarify this aspect had directed the learned counsel for the State to take instructions. The learned counsel for the State in compliance of the order of this Court has not only produced the original Service-Book of the petitioner showing the total calculation of fixation of his pension and other retirement benefits of the petitioner but has also taken a categorical stand that the total length of service of the petitioner has been computed and calculated not only up to 30.04.1992 but in fact up to 31.12.2000.

In the considered opinion of this Court, learned counsel for the State seems to be correct, inasmuch as, from the entry made by the District Malaria Officer, Patna in the Service-book on 25.08.2005, it would transpire that the respondents had not only allowed extra ordinary leave from 27.05.1992 to 31.12.2000 but had also calculated his salary as on 31.12.2000.

In this regard it would be relevant to quote the relevant part of Service-book of the petitioner which reads as follows:-

> ''मुख्य मलेरिया पदाधिकारी, बिहार पटना के ज्ञापांक 437 दिनांक 6.4.04 के आलोक में श्री श्रीधर सिन्हा सेवानिवृत बुनियादी स्वास्थ्य निरीक्षक के वेतन का पुर्ननिर्धारण निम्न प्रकार किया जाता है।
>
> वेतनमान 230–5–280 E.B.6 - 340 में

दिनांक 19.1.78 ---------- Rs. 328=00

19.1.79 ---------- Rs. 334=00

19.1.80 ---------- Rs. 340=00

19.1.81 ----------stagnation के कारण वेतन वृद्धि नहीं मिला

वेतन पुनरीक्षण समिति के अनुशंसा के आधार पर वेतनमान 535–10–645–15–690–E.B.–15–765 में दिनांक 1.4.81 को निम्न प्रकार वेतन निर्धारित किया जाता है।

31.3.1981 को मूल वेतन ---------- 340 =00

D/A / ADA ---------- 292=40

Total ---------- 632=00

Add 15%(Maximum Rs. 80) ------ 80=00

Total ---------- 712=40

stag fitting dt. 1.4.81------- 720=00

The next increment dt. 19-1-83 -- 735=00

19-1-84 -- 750=00

19-1-85 -- 765=00

दिनांक 1.1.86 को वेतन का पुनरीक्षण वेतनमान 1200–30–1800 में निम्न प्रकार किया गया।

दिनांक 1.1.86 को मूल वेतन ---------- 765 = 00

DA/ADA/(1.1.86) ---------- 413=10

35% pay fixation of Basic pay --- 267=75

Total ------- 1445=85

or

steppeal up revised pay scale 1470=00

dated 19-1-86 ---- 1500=00

19-1-87 ---- 1530=00

19-1-88 ---- 1560=00

प्रथम कालबद्ध प्रोन्नति मुख्य मलेरिया पदाधिकारी, बिहार पटना के ज्ञापांक 437 दिनांक .4.04 द्वारा दिनांक 19.1.88 से स्वीकृत/तत्पश्चात वेतनमान 1320–30–1560–40–2040 में दिनांक 19.1.88 को पूर्ननिर्धारण

दिनांक 19.1.88 ---------- 1560 = 00

Add 12% of Basic pay (max.150)--- 150 = 00

Total - 1710 = 00

stag fitting in the scale (1320-2040)

1320-30-1560-40-2040 में दिनांक 19.1.88 ––– 1760=00

19.1.89 ––– 1800=00

19.1.90 ––– 1840=00

19.1.91 ––– 1880=00

19.1.92 ––– 1920=00

19.1.93 ––– 1960=00

19.1.94 ––– 2000=00

19.1.95 ––– 2040=00

वित्त विभागीय संकल्प संख्या 660 वि0(2) दिनांक 8.2.99 के आलोक में वेतन का पुनरीक्षण वेतनमान 4000–100–6000 में

1.1.96 को मूल वेतन ––––––––– 2040=00
D.A. 148% --------- 3019=00
I.R. ---------- 100=00
I.R. ---------- 204=00

Total ------ 5363=00
40% (Fitment weightage) ------- 816=00
of Basic pay
Total ------ 6179=00

दिनांक 1.1.96 को वेतन ..... . 6000 = 00
R.P.P. --------- 179=00
दिनांक 1.1.98 को वेतन 6100 =00 + R.P.P. 79-
दिनांक 1.1.2000 को वेतन 6200=00+ R.P.P. Nil

ह0/–
जिला मलेरिया पदाधिकारी
पटना''

The aforementioned calculation, therefore, would go to show that the respondents had calculated pay of the petitioner up to 01.01.2000, which would be the last pay drawn by him in view of his retirement on 31.12.2000. As a matter of fact on the basis of such calculation the pension payment order and the gratuity payment order

was also revised and the petitioner was given Rs. 3100/- per month pension w.e.f 01.01.2001 and the gratuity of sum of Rs. 1,44,243/-.

That in fact would not be the end of the matter, inasmuch as, on 11.11.2005 the benefit of his second Time Bound Promotion was also given in view of the order of the Chief Malaria Officer on 13.11.2004 and the revised salary of the petitioner was also

fixed in the following manner:-

''मुख्य मलेरिया पदाधिकारी बिहार, पटना के ज्ञापांक 1489 दिनांक 13.11.04 द्वारा अपने कार्यालय ज्ञापांक 437 दिनांक 6.4.04 के द्वारा दी गई प्रथम कालबद्ध प्रोन्नति की स्वीकृति को संशोधित करते हुए श्री सिन्हा को बुनियादी स्वास्थ्य कार्यकर्त्ता के पद पर योगदान की तिथि 1.11.64 से 25 वर्ष सेवा पूरा करने के पश्चात दिनांक 01.11.89 से वेतनमान 1320–30–1560–40–2040 में द्वितीय कालबद्ध प्रोन्नति को स्वीकृति दी गई है तदनुसार वेतन का पूर्ण निर्धारिण निम्न प्रकार संशोधित किया जाता है–

दिनांक 19.1.88 ———————— Rs. 1560=00
दिनांक 19.1.89 ———————— Rs. 1590=00
(Add 12% of Basic Pay max.150=00) 150=00
1740=00

fitting in 1320-30-1560-40-2040
scale on dated 1.11.89 ----- Rs. 1760=00
1.11.90 ----- Rs. 1800=00
1.11.91 ----- Rs. 1840=00
1.11.92 ----- Rs. 1880=00
1.11.93 ----- Rs. 1920=00
1.11.94 ----- Rs. 1960=00
1.11.95 ----- Rs. 2000=00

ह0/–
11/11/2005
जिला मलेरिया पदाधिकारी
पटना

वित्त विभाग के संकल्प संख्या 660 वि0 (2) दिनांक 8.2.99 के आलोक में पुनरीक्षित वेतनमान 4000–100–6000 में वेतन का निर्धारण निम्न प्रकार किया जाता है–

दिनांक 1.1.96 को मूल वेतन -------- 2000=00
D.A.(148%) -------- 2960=00
I.R. ---------- 100=00
I.R. (10%) -------- 200=00
Total---- 5260=00
40% fitment weightage -- 800=00
Total---- 6060=00

दिनांक 1.1.96 को वेतन ----- 6000=00
R.P.P. ----- 60=00
दिनांक 1.1.98 को वेतन ----- 6100=00
दिनांक 1.1.2000 को वेतन ---- 6200=00

ह0/–
11/11/2005
जिला मलेरिया पदाधिकारी
पटना''

Thus from the aforementioned entry in the Service-book of the petitioner, it becomes clear that the respondents in fact have not only taken the aforementioned period of extra ordinary leave into consideration in fixation of monthly pension and other post retirement benefits but have also made the consequential payment.

In view of the above though the issue of post retirement benefit to the petitioner stands fully settled, this Court however would give liberty to the petitioner to represent before the competent Authority as with regard to any of the grievance relating to his post retirement benefits. If and When the petitioner would file such a representation, the same shall be disposed of by the competent Authority within a period of four months from the date of filing of the representation and further payment, if any, found admissible and payable to the petitioner would also be paid to the petitioner in next two months. The competent Authority while doing this exercise would be under obligation to take into account the observations and findings in this judgment as also in the earlier judgment dated

27.08.2008 passed in C.W.J.C No. 7798 of 2005.

With the aforementioned observations and direction, this application is disposed of.

MJC No. 534 of 2003

In this application, the petitioner has prayed for initiating a contempt proceeding alleging non-compliance of the order of this Court dated 21.5.2002 in CWJC No. 5662 of 2002.

The opposite parties have filed show-cause wherein it has been stated that in compliance of the interim order dated 21.5.2002, the petitioner had been paid the amount of Group Insurance, provisional pension, provisional gratuity, Leave Encashment, as recorded earlier.

In view of the above, this Court does not find any merit in the allegation that the interim order of this Court was not complied by the opposite parties.

That being so, this contempt application, in view of the stand taken by the opposite parties, seems to be wholly misconceived and is, accordingly, dismissed.

(Mihir Kumar Jha, J.)

Patna High Court, Patna
Dated the 25 of June, 2012
AFR/Rishi